IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 827 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESH JAGABHAI RABADIYA

Versus

HARISH KERAIYA NILEKENI

Appearance:

1. Special Criminal Application No. 827 of 2002

MR BP MUNSHI for Petitioner No. 1

MS NIRALI B MUNSHI for Petitioner No. 1

MR SHAKEEL A QURESHI for Respondent No. 1

MR KG SHETH, APP for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/01/2003

ORAL JUDGEMENT

Present petition has been filed by the petitioner

against the order dated 28/6/2002 passed by the learned Addl. Sessions Judge, Jamnagar in Criminal Revision Application Nos.80 of 2000 and 84 of 2000 whereby the learned Judge has confirmed the order dated 7/7/2000 passed by the learned J.M.F.C., Jamnagar in Criminal Case No.1062 of 2000 by which muddamal in question has not been handed over to either of the parties.

2. It appears that petitioner is claiming the muddamal on the ground that same has been seized from him and, therefore, in normal circumstances, it should be handed over to him. Whereas the respondent No.1, original complainant, is claiming the muddamal as a registered owner of the vehicle in question.

3. It also appears that both the trial court as well as the revisional court failed to decide the dispute between the parties and pass the appropriate order. This Court can also decide the disputes between the parties. However, since the rights of both the parties in carrying the matter further will be indirectly taken away by this Court if the dispute is decided by this Court, both the learned counsel for the respective parties agree matter may be sent back to be decided by the learned J.M.F.C., Jamnagar on merits as expeditiously as possible in light of the judgment delivered by the Apex Court in the case of Sundarbhai Ambalal Desai Vs. State of Gujarat, 2002(8) Supreme p. 525 more particularly paras 15 and 21.

4. In view of the above, order dated 7/7/2000 passed by the learned J.M.F.C., Jamnagar in Criminal Case No.1062 of 2000 and order dated 28/6/2002 passed by the learned Addl. Sessions Judge, Jamnagar in Criminal Revision Application Nos.80 of 2000 and 84 of 2000 are hereby quashed and set aside and matter is remanded to the court of J.M.F.C., Jamnagar for deciding the applications submitted by the present petitioner as well as the respondent No.1 on merits without being influenced by the this order keeping in mind the guidelines provided by the Apex Court in the aforesaid reported judgment. I hope that the learned J.M.F.C., Jamnagar as well as the learned Addl. Sessions Judge, Jamnagar will follow the aforesaid judgment in true spirit and decide the applications expeditiously preferably on day to day basis. Rule is made absolute accordingly.

5. Learned counsel for the respective parties assure before this Court that their counterparts at the court below will remain present before the trial Court latest by 7/2/2003 and will not seek any adjournment on flimsy

ground and will give cooperation keeping in mind judgment of the Apex Court referred hereinabove. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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